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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Federal Trade Commission,
10 Plaintiff,
11 vs.
12 ELH Consulting, LLC, *et al.*,
13 Defendants.
14
15

No. CV-12-02246-PHX-FJM

**STIPULATED FINAL JUDGMENT
AND ORDER FOR PERMANENT
INJUNCTION AND OTHER
EQUITABLE RELIEF AS TO
DEFENDANTS ELH CONSULTING,
LLC, also d/b/a PROACTIVE
PLANNING SOLUTIONS;
PURCHASE POWER SOLUTIONS,
LLC; ALLIED CORPORATE
CONNECTION, LLC; COMPLETE
FINANCIAL STRATEGIES, LLC;
EMORY L. HOLLEY IV a/k/a JACK
HOLLEY; and LISA MILLER**

16
17 Plaintiff Federal Trade Commission (“Commission” or “FTC”) filed its
18 Complaint for a Permanent Injunction and Other Equitable Relief to obtain
19 temporary, preliminary, and permanent injunctive relief, rescission or reformation
20 of contracts, restitution, disgorgement of ill-gotten gains, and other equitable
21 relief pursuant to Sections 13(b) and 19 of the Federal Trade Commission Act
22 (“FTC Act”), 15 U.S.C. §§ 53(b) and 57b, and the Telemarketing and Consumer
23 Fraud and Abuse Prevention Act (“Telemarketing Act”), 15 U.S.C. §§ 6101-
24 6108. Plaintiff and Defendants ELH Consulting, LLC, also d/b/a Proactive
25 Planning Solutions; Purchase Power Solutions, LLC; Allied Corporate
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1 Connection, LLC; Complete Financial Strategies, LLC; Emory L. Holley IV a/k/a
2 Jack Holley; and Lisa Miller (“Defendants”), stipulate to the entry of this
3 Stipulated Final Judgment and Order for Permanent Injunction (“Order”) by this
4 Court in order to resolve all matters in dispute in this action between them.
5

6 THEREFORE, IT IS ORDERED as follows:

7 **FINDINGS**

- 8
- 9 1. This court has jurisdiction over this matter.
 - 10 2. The Complaint charges that Defendants participated in deceptive acts
11 or practices in violation of Section 5(a) of the FTC Act, 15 U.S.C. § 45(a), and in
12 violation of the FTC’s Trade Regulation Rule entitled “Telemarketing Sales
13 Rule” (“TSR”), 16 C.F.R. Part 310.
14
 - 15 3. Defendants neither admit nor deny any of the allegations in the
16 Complaint, except as specifically stated in this Order. Only for purposes of this
17 action, Defendants admit the facts necessary to establish jurisdiction.
18
 - 19 4. Defendants waive any claim that they might have under the Equal
20 Access to Justice Act, 28 U.S.C. § 2412 concerning the prosecution of this action
21 through the date of this Order, and agree to bear their own costs and attorney’s
22 fees.
23
 - 24 5. Defendants and the Commission waive all rights to appeal or
25 otherwise challenge or contest the validity of this Order.
26
 - 27 6. Entry of this Order is in the public interest.
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DEFINITIONS

For purposes of this Order, the following definitions shall apply:

1. **“Defendants”** means all of the corporate Defendants and Individual Defendants, individually, collectively, or in any combination.
2. **“Corporate Defendants”** means ELH Consulting, LLC, also d/b/a Proactive Planning Solutions; Purchase Power Solutions, LLC; Allied Corporate Connection, LLC; Complete Financial Strategies, LLC; and their successors and assigns, as well as any subsidiaries, and any fictitious business entities or business names created or used by these entities, or any of them.
3. **“Individual Defendants”** means Emory L. Holley IV a/k/a Jack Holley and Lisa Miller, and by whatever other names each may be known.
4. **“Debt Relief Product or Service”** means any product, service, plan or program represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a person and one or more unsecured creditors or debt collectors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a person to an unsecured creditor or debt collector.
5. **“Financial Related Product or Service”** means any product or service represented, directly or by implication, to: (a) provide any consumer, arrange for any consumer to receive, or assist any consumer in receiving, credit, debit, or stored value cards; (b) improve, or arrange to improve, any consumer’s

1 credit record, credit history, or credit rating; (c) provide advice or assistance to
2 any consumer with regard to any activity or service the purpose of which is to
3 improve a consumer's credit record, credit history, or credit rating; (d) provide
4 any consumer, arrange for any consumer to receive, or assist any consumer in
5 receiving, a loan or other extension of credit; or (e) provide any consumer,
6 arrange for any consumer to receive, or assist any consumer in receiving any
7 service represented, expressly or by implication, to renegotiate, settle, or in any
8 way alter the terms of payment or other terms of the debt between a consumer
9 and one or more secured creditors, servicers, or debt collectors.
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12 6. **“Telemarketing”** means any plan, program, or campaign which is
13 conducted to induce the purchase of goods or services, or a charitable
14 contribution, by use of one or more telephones, and which involves a telephone
15 call, whether or not covered by the Telemarketing Sales Rule, but does not
16 include telephone calls in which the sale of goods and services is not completed,
17 and payment or authorization of payment is not required, until after a face-to-face
18 sales presentation.
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ORDER

I. BAN ON TELEMARKETING

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from participating in Telemarketing, or assisting others engaged in Telemarketing, whether directly or through an intermediary.

II. BAN ON MARKETING DEBT RELIEF PRODUCTS OR SERVICES

IT IS FURTHER ORDERED that Defendants are permanently restrained and enjoined from engaging in, participating in, or assisting others in the advertising, marketing, promoting, offering for sale, sale, or distribution of any Debt Relief Product or Service, whether directly or through an intermediary.

**III. PROHIBITED PRACTICES RELATING TO
FINANCIAL RELATED PRODUCTS OR SERVICES**

IT IS FURTHER ORDERED that Defendants, and Defendants' officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any Financial Related Product or Service, are permanently restrained and enjoined from:

A. Misrepresenting or assisting others in misrepresenting, expressly or by implication, any material fact, including but not limited to:

1. The terms or rates that are available for any loan or other extension of credit, including but not limited to:

- a. closing costs or other fees;
 - b. the payment schedule, the monthly payment amount(s), or other payment terms, or whether there is a balloon payment; interest rate(s), annual percentage rate(s), or finance charge; the loan amount, the amount of credit, the draw amount, or outstanding balance; the loan term, the draw period, or maturity; or any other term of credit;
 - c. the savings associated with the credit;
 - d. the amount of cash to be disbursed to the borrower out of the proceeds, or the amount of cash to be disbursed on behalf of the borrower to any third party;
 - e. whether the payment of the minimum amount specified each month covers both interest and principal, and whether the credit has or can result in negative amortization;
 - f. that the credit does not have a prepayment penalty or that no prepayment penalty and/or other fees or costs will be incurred if the consumer subsequently refinances; and
 - g. that the interest rate(s) or annual percentage rate(s) are fixed rather than adjustable or adjustable rather than fixed;
2. That any person can improve any consumer's credit record, credit history, or credit rating by permanently removing negative

1 information from the consumer's credit record, credit history, or
2 credit rating, even where such information is accurate and not
3 obsolete;

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5 3. Any person's ability to improve or otherwise affect a
6 consumer's credit record, credit history, credit rating, or ability to
7 obtain credit;

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9 4. Any aspect of any mortgage loan modification service or
10 foreclosure relief service, including, but not limited to, the amount of
11 savings or reduction in interest rate, loan principal, or monthly
12 payment that a consumer will receive from purchasing, using, or
13 enrolling in such mortgage loan modification service or foreclosure
14 relief service; the amount of time before a consumer will receive a
15 mortgage loan modification or relief from foreclosure; the likelihood
16 that a consumer will obtain a modified mortgage loan or relief from
17 foreclosure; or the reduction or cessation of collection calls; and
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19 5. That a consumer will receive legal representation; and

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21
22 B. Advertising or assisting others in advertising credit terms other than
23 those terms that actually are or will be arranged or offered by a creditor or lender.

24 **IV. PROHIBITED PRACTICES RELATING TO**
25 **ANY PRODUCTS OR SERVICES**

26 IT IS FURTHER ORDERED that Defendants, and Defendants' officers,
27 agents, servants, employees, attorneys, and all other persons in active concert or
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1 participation with any of them, who receive actual notice of this Order, whether
2 acting directly or indirectly in connection with the advertising, marketing,
3 promotion, offering for sale, sale or distribution of any product or service, are
4 permanently restrained and enjoined from misrepresenting or assisting others in
5 misrepresenting, expressly or by implication, any material fact, including but not
6 limited to:
7

8 A. Any material aspect of the nature or terms of any refund,
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10 cancellation, exchange, or repurchase policy, including, but not limited to, the
11 likelihood of a consumer obtaining a full or partial refund, or the circumstances in
12 which a full or partial refund will be granted to the consumer;
13

14 B. That any person is affiliated with, endorsed or approved by, or
15 otherwise connected to any other person, government entity, or public, non-profit,
16 or other non-commercial program, or any other program;
17

18 C. The total costs to purchase, receive, or use, or the quantity of, the
19 product, or service;
20

21 D. Any material restriction, limitation, or condition on purchasing,
22 receiving, or using the product or service; and

23 E. Any material aspect of the performance, efficacy, nature, or
24 characteristics of the product or service.
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V. SUBSTANTIATION FOR BENEFIT, PERFORMANCE, AND EFFICACY CLAIMS

IT IS FURTHER ORDERED that Defendants, and Defendants' officers, agents, servants, employees, attorneys, and all other persons in active concert or participation with any of them, who receive actual notice of this Order, whether acting directly or indirectly, in connection with the advertising, marketing, promotion, offering for sale, sale, or distribution of any product or service, are permanently restrained and enjoined from making any representation or assisting others in making any representation, expressly or by implication, about the benefits, performance, or efficacy of any product or service, unless, at the time such representation is made, Defendants possess and rely upon competent and reliable evidence that substantiates that the representation is true.

VI. MONETARY JUDGMENT AND PARTIAL SUSPENSION

IT IS FURTHER ORDERED that:

A. Judgment in the amount of \$11,900,000.00 is entered in favor of the Commission against Individual Defendants and Corporate Defendants, jointly and severally, as equitable monetary relief;

B. Defendants relinquish all right, title, and interest in the assets of the Receivership estate. Upon termination of the Receivership, the funds remaining in the Receivership estate shall be paid to the Commission. Such payment shall be made within ten (10) days of termination by the Court of the Receivership by electronic fund transfer in accordance with instructions previously provided by a

1 representative of the Commission. Upon such payment, the remainder of the
2 judgment is suspended;

3 C. The Commission's agreement to the suspension of part of the
4 judgment is expressly premised upon the truthfulness, accuracy, and
5 completeness of Defendants sworn financial statements and related documents
6 (collectively, "financial representations") submitted to the Commission, namely:
7

8 1. the Financial Statement of Individual Defendant Emory L.
9

10 Holley IV provided to the FTC on August 6, 2013;

11 2. the Financial Statement of Individual Defendant Lisa Miller
12 signed on provided to the FTC on August 6, 2013;
13

14 D. The suspension of the judgment will be lifted as to any Defendant if,
15 upon motion by the Commission, the Court finds that the Defendant failed to
16 disclose any material asset, materially misstated the value of any asset, or made
17 any other material misstatement or omission in the financial representations
18 identified above; and
19

20 E. If the suspension of the judgment is lifted, the judgment becomes
21 immediately due as to that Defendant in the amount specified in Subsection A
22 above (which the parties stipulate only for purposes of this Section) represents the
23 consumer injury alleged in the Complaint, less any payment previously made
24 pursuant to this Section, plus interest computed from the date of entry of this
25 Order.
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VII. ADDITIONAL MONETARY PROVISIONS

IT IS FURTHER ORDERED that:

A. Defendants relinquish dominion and all legal and equitable right, title, and interest in all assets transferred pursuant to this Order and may not seek the return of any assets;

B. The facts alleged in the Complaint will be taken as true, without further proof, in any subsequent civil litigation by or on behalf of the Commission, including in a proceeding to enforce its rights to any payment or money judgment pursuant to this Order, such as a nondischargeability complaint in any bankruptcy case;

C. The facts alleged in the Complaint establish all elements necessary to sustain an action by the Commission pursuant to Section 523(a)(2)(A) of the Bankruptcy Code, 11 U.S.C. § 523(a)(2)(A), and that this Order will have collateral estoppel effect for such purposes;

D. Defendants acknowledge that the Taxpayer Identification Numbers and Social Security Numbers, which Defendants previously submitted to the Commission, may be used for collecting and reporting on any delinquent amount arising out of this Order, in accordance with 31 U.S.C. § 7701;

E. All money paid to the Commission pursuant to this Order may be deposited into a fund administered by the Commission or its designee to be used for equitable relief, including consumer redress and any attendant expenses for

1 the administration of any redress fund. If a representative of the Commission
2 decides that direct redress to consumers is wholly or partially impracticable or
3 money remains after redress is completed, the Commission may apply any
4 remaining money for such other equitable relief (including consumer information
5 remedies) as it determines to be reasonably related to Defendants' practices
6 alleged in the Complaint. Any money not used for such equitable relief is to be
7 deposited to the U.S. Treasury as disgorgement. Defendants have no right to
8 challenge any actions the Commission or its representative may take pursuant to
9 this Section; and
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11

12 F. Upon entry of this Order, the freeze on the assets of Individual
13 Defendants Emory L. Holley and Lisa Miller pursuant to the Preliminary
14 Injunction entered in this action is lifted. The freeze on the assets of the
15 Receivership Defendants shall remain in effect until such time as the Receiver
16 receives payment of all Court-approved fees and expenses of the Receiver and the
17 Receiver is discharged pursuant to Section X of this Order. A financial institution
18 shall be entitled to rely upon a letter from Plaintiff stating that the freeze on
19 Receivership Defendants' assets has been lifted.
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23 **VIII. CUSTOMER INFORMATION**

24 IT IS FURTHER ORDERED that Defendants, and Defendants' officers,
25 agents, servants, employees, attorneys, and all other persons in active concert or
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1 participation with any of them who receive actual notice of this Order, are
2 permanently restrained and enjoined from directly or indirectly:

3 A. Failing to provide sufficient customer information to enable the
4 Commission to efficiently administer consumer redress. Defendants represent
5 that they have provided this redress information to the Commission. If a
6 representative of the Commission requests in writing any information related to
7 redress, Defendants must provide it, in the form prescribed by the Commission,
8 within fourteen (14) days;
9

10 B. Disclosing, using, or benefitting from customer information,
11 including the name, address, telephone number, email address, social security
12 number, other identifying information, or any data that enables access to a
13 customer's account (including a credit card, bank account, or other financial
14 account), that any Defendant obtained prior to entry of this Order in connection
15 with the marketing or sale of any Debt Relief Product or Service; and
16

17 C. Failing to destroy such customer information in all forms in their
18 possession, custody, or control within thirty (30) days after entry of this Order.
19 *Provided, however,* that customer information need not be disposed of, and may
20 be disclosed, to the extent requested by a government agency or required by a
21 law, regulation, or court order.
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1 **IX. PROHIBITION ON COLLECTING ON ACCOUNTS**

2 IT IS FURTHER ORDERED that Defendants, and Defendants' officers,
3 agents, servants, employees, attorneys, and all other persons in active concert or
4 participation with any of them who receive actual notice of this Order, whether
5 acting directly, or indirectly, are permanently restrained and enjoined from
6 attempting to collect, collecting, or assigning any right to collect payment from
7 any consumer who purchased or agreed to purchase any Debt Relief Product or
8 Service from any Defendant.
9

10 **X. RECEIVERSHIP TERMINATION**

11 IT IS FURTHER ORDERED that the Receiver must complete all duties
12 within one-hundred eighty (180) days after entry of this Order, but any party or
13 the Receiver may request that the Court extend the Receiver's term for good
14 cause.
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16 **XI. ORDER ACKNOWLEDGMENTS**

17 IT IS FURTHER ORDERED that Defendants obtain acknowledgments of
18 receipt of this Order:
19

20 A. Each Defendant, within seven (7) days of entry of this Order, must
21 submit to the Commission an acknowledgment of receipt of this Order sworn
22 under penalty of perjury;
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24 B. For five (5) years after entry of this Order, each Individual Defendant
25 for any business that such Defendant, individually or collectively with any other
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1 Defendant, is the majority owner or controls directly or indirectly controls, and
 2 each Corporate Defendant, must deliver a copy of this Order to: (1) all principals,
 3 officers, directors, and LLC managers and members; (2) all employees, agents,
 4 and representatives who participate in conduct related to the subject matter of the
 5 Order; and (3) any business entity resulting from any change in structure as set
 6 forth in the Section titled Compliance Reporting. Delivery must occur within
 7 seven (7) days of entry of this Order for current personnel. For all others,
 8 delivery must occur before they assume their responsibilities; and
 9

10
 11 C. From each individual or entity to which a Defendant delivered a copy
 12 of this Order, that Defendant must obtain, within thirty (30) days, a signed and
 13 dated acknowledgment of receipt of this Order.
 14

15 **XII. COMPLIANCE REPORTING**

16 IT IS FURTHER ORDERED that Defendants make timely submissions to
 17 the Commission:
 18

19 A. One (1) year after entry of this Order, each Defendant must submit a
 20 compliance report, sworn under penalty of perjury.
 21

- 22 1. Each Defendant must: (a) identify the primary physical,
 23 postal, and email address and telephone number, as designated points
 24 of contact, which representatives of the Commission may use to
 25 communicate with Defendant; (b) identify all of that Defendants'
 26 businesses by all of their names, telephone numbers, and physical,
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1 postal, email, and Internet addresses; (c) describe the activities of
2 each business, including the goods and services offered, the means of
3 advertising, marketing, and sales, and the involvement of any other
4 Defendant (which Individual Defendants must describe if they know
5 or should know due to his own involvement); (d) describe in detail
6 whether and how that Defendant is in compliance with each Section
7 of this Order; and (e) provide a copy of each Order Acknowledgment
8 obtained pursuant to this Order, unless previously submitted to the
9 Commission;
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11
12 2. Additionally, each Individual Defendant must: (a) identify all
13 telephone numbers and all physical, postal, email and Internet
14 addresses, including all residences; (b) identify all business activities,
15 including any business for which such Defendant performs services
16 whether as an employee or otherwise and any entity in which such
17 Defendant has any ownership interest; and (c) describe in detail such
18 Defendant's involvement in each such business, including title, role,
19 responsibilities, participation, authority, control, and any ownership.
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22
23 B. For twenty (20) years after entry of this Order, each Defendant must
24 submit a compliance notice, sworn under penalty of perjury, within fourteen (14)
25 days of any change in the following:
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1 1. Each Defendant must report any change in: (a) any designated
2 point of contact; or (b) the structure of any Corporate Defendant or
3 any entity that Defendant has any ownership interest in or controls
4 directly or indirectly controls that may affect compliance obligations
5 arising under this Order, including: creation, merger, sale, or
6 dissolution of the entity or any subsidiary, parent, or affiliate that
7 engages in any acts or practices subject to this Order;
8

9 2. Additionally, each Individual Defendant must report any
10 change in: (a) name, including aliases or fictitious name, or residence
11 address; or (b) title or role in any business activity, including any
12 business for which such Defendant performs services whether as an
13 employee or otherwise and any entity in which such Defendant has
14 any ownership interest, and identify the name, physical address, and
15 any Internet address of the business or entity;
16

17 C. Each Defendant must submit to the Commission notice of the filing
18 of any bankruptcy petition, insolvency proceeding, or similar proceeding by or
19 against such Defendant within fourteen (14) days of its filing;
20

21 D. Any submission to the Commission required by this Order to be
22 sworn under penalty of perjury must be true and accurate and comply with
23 28 U.S.C. § 1746, such as by concluding: “I declare under penalty of perjury
24 under the laws of the United States of America that the foregoing is true and
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1 correct. Executed on:_____” and supplying the date, signatory’s full name, title
2 (if applicable), and signature; and

3 E. Unless otherwise directed by a Commission representative in writing,
4 all submissions to the Commission pursuant to this Order must be emailed to
5 DEbrief@ftc.gov or sent by overnight courier (not the U.S. Postal Service) to:
6 Associate Director for Enforcement, Bureau of Consumer Protection, Federal
7 Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.
8

9 The subject line must begin: FTC v. ELH Consulting, LLC, et al., (FTC Matter
10 No. X130004).
11

12 **XIII. RECORDKEEPING**

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14 IT IS FURTHER ORDERED that Defendants must create certain records
15 for twenty (20) years after entry of the Order, and retain each such record for five
16 (5) years. Specifically, Corporate Defendants and each Individual Defendant for
17 any business that such Defendant, individually or collectively with any other
18 Defendant, is a majority owner or controls directly or indirectly, must create and
19 retain the following records:
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21 A. Accounting records showing the revenues from all goods or services
22 sold;
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24 B. Personnel records showing, for each person providing services,
25 whether as an employee or otherwise, that person’s: name, addresses, and
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1 telephone numbers; job title or position; dates of service; and, if applicable, the
2 reason for termination;

3 C. Records of all consumer complaints and refund requests, whether
4 received directly or indirectly, such as through a third party, and any response;
5

6 D. All records necessary to demonstrate full compliance with each
7 provision of this Order, including all submissions to the Commission; and
8

9 E. A copy of each unique advertisement or other marketing material.

10 **XIV. COMPLIANCE MONITORING**

11 IT IS FURTHER ORDERED that, for the purpose of monitoring
12 Defendants' compliance with this Order, including the financial representations
13 upon which part of the judgment was suspended and any failure to transfer any
14 assets as required by this Order:
15

16 A. Within fourteen (14) days of receipt of a written request from a
17 representative of the Commission, each Defendant must: submit additional
18 compliance reports or other requested information, which must be sworn under
19 penalty of perjury; appear for depositions; and produce documents for inspection
20 and copying. The Commission is also authorized to obtain discovery, without
21 further leave of court, using any of the procedures prescribed by Federal Rules of
22 Civil Procedure 29, 30 (including telephonic depositions), 31, 33, 34, 36, 45, and
23 69;
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1 B. For matters concerning this Order, the Commission is authorized to
2 communicate directly with each Defendant. Defendant must permit
3 representatives of the Commission to interview any employee or other person
4 affiliated with any Defendant who has agreed to such an interview. The person
5 interviewed may have counsel present; and
6

7 C. The Commission may use all other lawful means, including posing,
8 through its representatives as consumers, suppliers, or other individuals or
9 entities, to Defendants or any individual or entity affiliated with Defendants,
10 without the necessity of identification or prior notice. Nothing in this Order
11 limits the Commission's lawful use of compulsory process, pursuant to Sections 9
12 and 20 of the FTC Act, 15 U.S.C. §§ 49, 57b-1.
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14


15 **XV. RETENTION OF JURISDICTION**

16 IT IS FURTHER ORDERED that this Court retains jurisdiction of this
17 matter for purposes of construction, modification, and enforcement of this Order.
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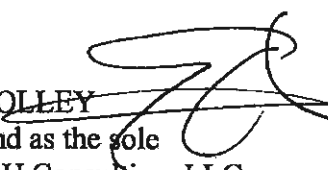
19 Dated this 16th day of October, 2013.
20

21 *Frederick J. Martone*
22 Frederick J. Martone
23 Frederick J. Martone
24 Senior United States District Judge
25
26
27
28


1 Submitted By:

2 
3 ELEANOR DURHAM
4 LAURA M. SOLIS
5 Attorneys for Plaintiff
6 Federal Trade Commission


Date: 10/15/13

7
8 EMORY L. HOLLEY 
9 Individually and as the sole
10 Member of ELH Consulting, LLC

Date: 9-13-13

11
12 LISA MILLER 
13 Individually and as the sole
14 Member of Purchase Power Solutions, LLC;
15 Allied Corporate Connections, LLC, and
16 Complete Financial Strategies, LLC

Date: 9/13/13

17 DAVID G. BRAY 
18 Dickinson Wright Mariscal Weeks
19 Attorneys for Defendants

Date: 9/13/2013